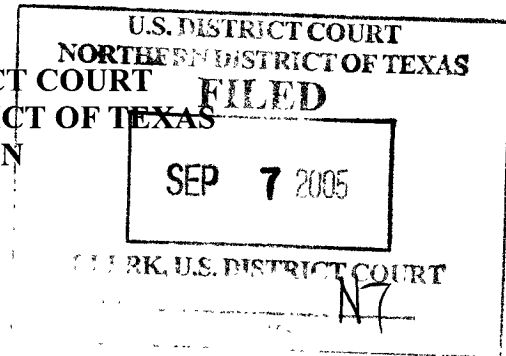


UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION



THE VERIZON EMPLOYEE
BENEFITS COMMITTEE,

Plaintiff,

v.

MELISSA ADAMS,

Defendant.

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Civil Action No.

3-05 CV-1793 M

222825

COMPLAINT SEEKING RECOVERY OF OVERPAYMENT, CONSTRUCTIVE
TRUST AND INJUNCTIVE RELIEF

This is an action brought by the Verizon Employee Benefits Committee to recoup overpayments of benefits from the Verizon Management Pension Plan (the "Plan") made to Defendant Melissa Adams as a result of an administrative error.

Parties

1. Plaintiff, the Verizon Employee Benefits Committee, is the "administrator" and "fiduciary" of the Plan as that term is defined in the Employee Retirement Income Security Act of 1974 ("ERISA"). See ERISA §§ 3(16) & 3(21), 29 U.S.C. §§ 1002(16) & (21). The Plan is an ERISA-covered pension plan within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1). As administrator and fiduciary of the Plan, the Verizon Employee Benefits Committee has the discretionary authority to interpret the Plan, to exercise control over disbursements of assets in the Plan, and to perform various other tasks necessary to administer the Plan. Responsibility for day-to-

day administration of the Plan (including recoupment of overpayments) has been delegated by the Verizon Employee Benefits Committee to the pension administration department within the Verizon human resources department in Coppell and Irving, Texas.

2. Defendant Melissa Adams (“Adams”) is a former participant in the Plan. She resides at 2344 Thornton Avenue, Harrisburg, Pennsylvania 17109.

Jurisdiction and Venue

3. This Court has jurisdiction over the subject matter of this action pursuant to 29 U.S.C. §§ 1132(a)(3) & (e)(1), and under 28 U.S.C. § 1331.

4. Venue is proper in this Court pursuant to 29 U.S.C. § 1132(e)(2) because the Plan is administered in this judicial district.

Factual Background

5. Defendant Adams is a former employee of Verizon Communications Inc. and/or its subsidiaries and predecessor corporations (“Verizon”). Adams’ original employment with Verizon began on February 2, 1972. On May 31, 1996, Adams retired and received a lump sum pension benefit in full satisfaction of the pension she earned under the Plan.

6. On June 29, 1998, Adams was rehired by Verizon and remained employed until she retired a second time on November 22, 2003. Following her second retirement, in January 2004, Adams received a second lump sum pension distribution from the Plan in the amount of \$381,039.67.

7. Under the terms of the Plan, Adams was entitled to receive a lump sum benefit of \$160,932.73 from the Plan based on her second retirement in November of 2003.

8. However, in January 2004, due to an administrative error, the Verizon Benefits Center mistakenly paid Adams a lump sum benefit of \$381,039.67. This benefit was \$220,106.94 more than Adams was entitled to receive under the terms of the Plan. This overpayment was based on a benefit calculation that did not properly offset the prior pension distribution that Adams received in May 1996. The Plan's terms provide the specific basis for calculating Adams' pension. Under the terms of the Plan, Adams is not entitled to the full amount of the lump sum benefit that was paid to her in January 2004.

9. After discovering the overpayment made to Adams, Verizon's pension department wrote to Adams on behalf of the Verizon Employee Benefits Committee explaining the payment error and requesting that Adams remit the overpayment to the Plan.

10. Adams has not returned the overpaid pension funds to the Plan, nor has she indicated that she will return the overpaid funds.

11. This action seeks to recover funds paid by the Plan and that are in the constructive possession and legal control of Adams, but belong in good conscience to the Plan.

Count I

12. Plaintiff incorporates by reference the factual allegations of paragraphs 1-11 above.

13. Pursuant to 29 U.S.C. § 1132(a)(3), plaintiff is entitled to appropriate equitable relief to enforce the terms of the Plan providing that an employee with the salary and service history of Adams receive a lump sum benefit of \$160,932.73, but nothing more, and to enforce the requirements of 29 U.S.C. § 1104. Plaintiff is entitled to impose a constructive trust on the overpayment of \$220,106.94, wherever it may be found, and to receive equitable restitution in the same amount to recoup the assets that rightfully belong to the Plan.

14. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff prays for the following relief:

(a) That the Court enter a preliminary injunction prohibiting Defendant Adams from dissipating, transferring, pledging, spending, transferring, disposing, or encumbering the overpayment of \$220,106.94, except to transfer the overpayment to the Plan or its agent, until this case can be resolved on the merits. Failure to grant such relief would result in a substantial threat that plaintiff will suffer irreparable harm.

(b) That the Court enter a judgment for plaintiff on Count I, impose a constructive trust in the amount of \$220,106.94 on the funds and/or equitable liens on the accounts, funds, or real property where those funds may be traced, and grant plaintiff the remedy of equitable restitution in the amount of \$220,106.94.

(c) That the court award pre- and post-judgment interest.

(d) That the court award plaintiff attorney's fees pursuant to 29 U.S.C.

§ 1132(g).

(e) Any other relief as the Court deems appropriate under the circumstances.

Respectfully submitted this 7th day of September, 2005.

MUNSCH HARDT KOPF & HARR, P.C.

4000 Fountain Place

1445 Ross Avenue

Dallas, Texas 75202-2790

(214) 855-7500 (telephone)

214) 855-7584 (telecopy)

By: 

Grant H. Teegarden, #50511849

ATTORNEYS FOR PLAINTIFF

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I. (a) PLAINTIFFS Verizon Employee Benefits Committee	DEFENDANTS Melissa Adams
3-05 CV-1793M	
(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)	County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)
Dallas County	Pennsylvania
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.	
(c) Attorney's (Firm Name, Address, and Telephone Number) Grant H. Teegarden, Munsch Hardt Kopf & Harr, P.C., 1445 Ross Avenue, Suite 4000, Dallas, Texas 75202; (214) 855-7500	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)		III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)	
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF DEF <input type="checkbox"/> 1 <input type="checkbox"/> 1
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	PTF DEF <input type="checkbox"/> 2 <input type="checkbox"/> 2
		Citizen or Subject of a Foreign Country	PTF DEF <input type="checkbox"/> 3 <input type="checkbox"/> 3

IV. NATURE OF SUIT (Place an "X" in One Box Only)				
CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)						
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify)	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Brief description of cause: ERISA section 502(a)(3), complaint seeking reimbursement of overpayment and constructive trust

VII. REQUESTED IN COMPLAINT:	<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23	DEMAND \$	CHECK YES only if demanded in complaint. JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
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VIII. RELATED CASE(S) IF ANY	(See instructions)	JUDGE	DOCKET NUMBER
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DATE 9/9/05	SIGNATURE OF ATTORNEY OF RECORD
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FOR OFFICE USE ONLY	RECEIPT #	AMOUNT	APPLYING IFP
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JUDGE	MAG JUDGE
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